

CITY OF WORCESTER ZONING BOARD OF APPEALS



RULES AND REGULATIONS

**Adopted and effective
May 6, 1991**

**Amended July 23, 2007
Amended June 29, 2009
Amended November 8, 2010**

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ZONING BOARD
CITY OF WORCESTER
MASSACHUSETTS

RULES AND REGULATIONS

Adopted and effective

May 6, 1991

ARTICLE I

ORGANIZATION

Section 1. ADOPTION AND REPEAL

These rules and regulations were approved and adopted in public meeting by the Zoning Board of Appeals on May 6, 1991 and became effective forthwith. These rules and regulations supersede all previous regulations of the Board, which are hereby repealed.

Section 2. POWERS

The Board shall have the power to hear and decide:

A. Special Permits. Application for special permits as provided for under City of Worcester Zoning Ordinance.

B. Variances. Petitions for variances from the City of Worcester Zoning Ordinance, excluding petitions for use variances.

C. Comprehensive Permits. Applications for comprehensive permits pursuant to Massachusetts General Laws Chapter 40B.

D. Administrative Appeals. An appeal by any person aggrieved by reason of his inability to obtain either a permit or enforcement action from any administrative officer under the provisions of General Laws Chapter 40A.

Section 3. OFFICERS

Annually, during the first Zoning Board of Appeals meeting held in November, the Board shall, by a majority vote, elect both a chairperson and a vice chairperson. Alternates may not participate in this annual election unless, at the time of the

election, an alternate member is designated to sit on the Board.

Section 4. CHAIRPERSON: POWERS & DUTIES

The Chairperson shall vote and be recorded on all matters coming before the Zoning Board of Appeals. Subject to these rules, the Chairperson shall be the presiding officer and shall officiate at all hearings. The Chairperson shall decide all points of order, unless overruled by a majority of the Zoning Board of Appeals. The Chairperson shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws and the City of Worcester Zoning Ordinance and, subject to these rules and further instructions of the Board, the Chairperson shall transact the official business of the Board, supervise the work of the clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. The Chairperson shall, at each meeting, report on all official transactions that have not otherwise come to the attention of the Board.

Section 5. VICE-CHAIRPERSON

In the absence of the Chairperson, the Vice-Chairperson shall carry out the duties of the Chairperson and shall have all the powers of the Chairperson.

Section 6. ACTING CHAIRPERSON

In the event that both the Chairperson and Vice-Chairperson are absent or unable to participate in a particular matter, then the Board Member, senior by date of appointment shall be designated Acting Chairperson. The Acting Chairperson shall carry out the

duties of the Chairperson and shall have all the powers of the Chairperson.

Section 7. ALTERNATE MEMBERS

The Chairperson shall designate an Alternate Member to sit on the Board, in the event of an absence, inability to act or conflict of interest on the part of any board member. In the event of a vacancy on the Board, the Chairperson may designate an Alternate Member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term.

Section 8. ATTENDANCE AT MEETINGS

a. Members and Alternate Members shall attend all public hearings. Alternate Members shall be designated by the Chairperson to sit and vote in the place of any member incapacitated by conflict of interest, personal interest or absence.

b. No hearing shall be conducted with less than four (4) members/alternate members present and qualified to vote. In the event that less than four (4) members are present and qualified to vote, then the hearing shall be adjourned to such time as four (4) qualified members/alternate members are available and present.

c. A member who will be incapacitated by absence, personal interest or conflict from attending any public hearing or participating in a particular matter shall notify the Chairperson as soon as practicable. An Alternate Member shall then be designated by the Chairperson to sit in the member's place. In the absence of a member at a meeting during which a vote is to be taken on a matter which was heard by the absent member, the Chairperson

may designate an alternate member, who was present at the prior hearing, to vote in place of the absent member.

Section 9. CONFLICT OF INTEREST

Any member who disqualifies himself/herself for personal interest from participating and voting upon any matter shall notify the Chairperson of his/her intent to disqualify himself/herself as soon as practicable. When the matter is reached for hearing, the Chairperson shall state the fact of disqualification for the record. The Chairperson shall also designate an Alternate Member to sit in the place of the disqualified member.

Section 10. QUORUM

The presence of four (4) members shall constitute a quorum.

Section 11. REGULAR MEETINGS

Regular meetings of the Board of Appeals shall be held at 5:30 P.M. on the second and fourth Mondays of each month at City Hall, or at such other time and place as designated by the Chairperson.

Section 12. SPECIAL MEETINGS

Special meetings may be called by the Chairperson, or at the request of two (2) members. Written notice of a special meeting should be given to each member/alternate member at least forty-eight (48) hours before the time set for the meeting, except that announcement of a special meeting, at any meeting attended by all the members, shall be sufficient notice of a special meeting. Notices of all meetings shall be publicly posted as required by law.

ARTICLE II

APPLICATIONS TO THE BOARD

Section 1. APPLICATION FORM

All appeals, applications or petitions shall be drawn in a form approved by the Law Department, filed in fifteen (15) copies. No action shall be taken on any appeal or petition until such time as it is made in the prescribed manner.

Section 2. FILING PERIOD

Any administrative appeal must be taken within thirty (30) days of the date of the order or decision which is the subject of the appeal. The Petitioner must file, with the City Clerk, a Notice of Appeal specifying the grounds for the appeal. The Notice of Appeal must contain a copy of the order or decision attached to the notice.

Section 3. FINDINGS OF FACT

All appellants, applicants or petitioners shall file, in fifteen (15) copies, completed "Findings of Fact" in a form approved by the Law Department. A document, entitled "Findings of Fact", shall accompany the initial appeal, application or petition and must be filed simultaneously.

Section 4. PLAN OF LAND TO ACCOMPANY PETITION

Each application and petition to the Board shall be accompanied by fifteen (15) copies of the following described plan:

The size of the plan shall be at least 8 1/2" x 11" or 11" x 17" drawn to scale, 1 inch equals 40 feet; it shall have a north

point, names of streets, zoning districts, names of owners of properties up to abutters of abutters of the subject property, property lines. The location of buildings or use of the property where a variance or special permit is requested and distances from adjacent buildings and property lines shall be verified in the field and shown on the plan. The dimensions of the lot, and the percentage of the lot covered by the principal and accessory buildings, and the required parking spaces shall be shown. Entrances, exits, driveways, etc., that are pertinent to the granting of the variance or special permit, shall be shown.

Section 5. FILING FEES

The filing fee for a public hearing before the Board shall be determined by the category of relief that is being sought or the special permit being sought. The fee schedule is as follows:

A. Variances:

- | | |
|-----------------|---|
| 1. Dimensional: | \$100 plus \$10 per 100 square feet of relief requested |
| 2. Other: | \$125 |

B. Special Permits:

- | | |
|---|--|
| 1. Residential New construction, conversion to additional dwelling units | \$125 plus \$50 per dwelling unit |
| 2. Non-residential new construction or conversion to a non-residential use as allowed by special permit | \$125 plus amount required under Section 5.1 |
| 3. Parking/Loading | |

a.	Spaces:	\$50 per space for which relief is requested
b.	Landscape or barrier requirements	\$75 per square foot of relief requested
4.	Non-Conforming Use Expansion or Change	\$100 plus amount required under Section 5.1
5.	Other Special Permits	\$125
C.	Administrative Appeal	\$100
D.	Amendments to Existing Variances or Special Permits	\$100
E.	Extension of Time	\$50

Section 5.1

Specific uses shall be subject to an additional fee per square foot of new construction or conversion requiring relief or a special permit as follows:

All uses included under the following tables of the City of Worcester Zoning Ordinance:

Article IV, Section 2, Table 4.1 General Uses

\$.15 per sq. ft.

Article IV, Section 2, Table 4.1 Business Uses

\$.20 per sq. ft.

Article IV, Section 2, Table 4.1 Manufacturing Uses

\$.25 per sq. ft.

Petitioners requesting relief in more than one of the above categories shall be required to pay a total of the fees from each applicable category.

Fees are based on the magnitude of the relief requested and not that ultimately granted.

Section 5.2

Those structures and uses begun in advance of obtaining necessary relief from the Board shall be subject to an additional charge of ten (10%) percent of the fees.

Section 5.3

In no event shall the fees exceed \$2,500.00.

Section 5.4

Prior to filing an application, upon written request, and for good cause shown, the Board may waive or reduce filing fees.

Section 5.5

Filing fees for those applications who have already received site plan approval for the proposed use shall be no more than \$250.00, regardless of the type or amount of relief requested.

Section 6. DISTRIBUTION OF APPLICATIONS

The City Clerk shall distribute copies of all filed documents to the members/alternate members of the Zoning Board of Appeals, and relevant municipal departments including OPCD, Planning Board, Bureau of Land Use Control, Traffic & Engineering Department, School Department, Department of Public Works, Law Department and Department of Code Inspection.

Section 7. AMENDMENTS TO PETITIONS

The Board shall only vote on petitions pending before it. Any modifications, amendments or alterations to a petition must be presented to the Board for its consideration at a subsequent public

meeting. For the purposes of this Section, the public hearing originally scheduled to consider the petition may be continued to a later date. If the Petitioner presents revised plans which differ substantially from those originally submitted the Board shall require that the petition be withdrawn.

Section 8. EXTENSIONS

Extensions of time for completion of an activity authorized by a Special Permit or Variance may be granted by the Board, provided, that the application for such an extension is filed prior to the expiration of the applicable time period and provided that, the applicant files a copy of the applicable special permit or variance along with the application for such an extension.

Section 9. AGENDA

An agenda shall be prepared in advance of the meetings and, except by unanimous consent of all members sitting, no item shall be discussed unless it is on the agenda.

ARTICLE III

HEARINGS

Section 1. NOTICE

Notice of hearings shall be advertised as required by the provisions of General Laws Chapter 40A. In addition, a copy of the notice shall be sent by mail, postage prepaid, fourteen (14) days prior to the day of the hearing, to the petitioner or appellant, abutters, owners of land directly opposite on any public or private street or way, and abutters to abutters that are within three hundred (300) feet of the property line of the petitioner.

Section 2. ORDER OF HEARINGS

All hearings shall be called to order by the Chairperson. The petitions generally shall be heard in the order in which they appear on the agenda. Any petition, however, may be heard out of turn at the discretion of the Chairperson.

Section 3. APPEARANCE

Any person, whether entitled to notice of the petition or not, may appear in person or by agent or attorney at any hearing or may submit a statement in writing to the Board. Every person appearing before the Board or submitting a statement in writing must identify himself/herself by full name and current residential address.

Section 4. REPRESENTATION AND ABSENCE

An applicant may appear in his own behalf, or be represented by an agent or attorney. In the absence of any appearance on behalf of a petitioner or appellant, the Board may consider the request based upon the petition and any other evidence presented to it in public hearing.

Section 5. CASE PRESENTATION

5.1 The Petitioner's case shall be presented first. The Petitioner shall have the right to present such witnesses, experts, exhibits, documents, charts, plans, models and displays as he/she deems necessary to adequately present the case. The Board may retain any documents or plans which have been introduced into evidence.

5.2 Following the petitioner's presentation, the Board shall hear persons appearing either in person or by written statements,

in opposition. There shall be no cross-examination of the petitioner. Any and all questions directed to the Petitioner shall be directed through the Chairperson. Upon completion of all testimony in opposition, the Petitioner shall, at the discretion of the Chairperson, be given an opportunity to rebut any testimony given in opposition. After such rebuttal, if there are no other persons desiring to be heard, either in favor of or in opposition to a petition, the Chairperson shall declare the hearing closed.

5.3 All Board members and alternate Board members present, regardless of whether they are sitting as voting members, shall have the right, during a hearing, to question any Petitioner or any other person appearing before the Board and to request additional information.

5.4. The Chairperson shall have the power and discretion to rule any person appearing at the hearing out of order and to exclude or limit any testimony which, in his/her opinion, is redundant, repetitive, improper and immaterial. Nothing in this section, however, shall deny to any person the right to appear at a hearing and be recorded, orally or in writing, in favor of or in opposition to any petition.

5.5 The Board may, by majority vote, continue a hearing to a date certain to enable a Petitioner or any other interested person to present such further evidence, exhibits, revised plans, financial statements and other documents which the Board may, at its discretion, request or deem necessary.

Section 6. ADJOURNMENT

If a hearing is not completed or, if by a majority vote the Board requests that a Petitioner or other interested party present further evidence, the hearing may be adjourned to a date certain. If the hearing is adjourned to a date certain, no further notice, other than posting by the City Clerk's office shall be required.

Section 7. POSTPONEMENT

At the request of the Petitioner or upon motion by a Board member, a scheduled hearing may be postponed to a later date by a majority vote of the Board; provided that, if the Board deems it necessary, the petition may be ordered readvertised and all interested parties and owners renotified and a new filing fee paid.

Section 8. WITHDRAWAL

A Petition may be withdrawn without prejudice at any time prior to the commencement of the hearing on the petition. Once the hearing has commenced, the Petitioner may not withdraw the petition without prejudice absent a majority vote of the Board members.

ARTICLE IV

DISPOSITION BY THE BOARD

Section 1. VOTING REQUIREMENTS

The concurring vote of four (4) members of the Board shall be necessary to reverse any order or decision of any administrative official or to approve any petition or application for a variance or special permit or amendment thereto. The concurring vote of three (3) members of the Board shall be necessary to approve an application for a comprehensive permit.

Section 2. RECONSIDERATION

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board except in accordance with Massachusetts General Laws Chapter 40A, Section 16.

Section 3. AMENDMENT AND REVISION OF DECISIONS

The Board may clarify any order or decision and may, within a reasonable period of time, amend a decision by adding a statement of further reasons for its decision. Such action may be made for the purpose of correcting clerical errors and decision clarification only and may not serve to alter the decision in a substantial manner.

ARTICLE V

POLICIES AND ADVISE

Section 1. ADVICE

Any advice, opinion or information given by any Board member, or any employee or official of the City of Worcester shall not be binding on the Board.

Section 2. AUTHORITY

Pursuant to Chapter 40A, Section 18 of the Massachusetts General Laws, the Zoning Board of Appeals issues the rules and regulations for conducting its business and otherwise carrying out the purposes of the Massachusetts General Laws and the City of Worcester Zoning Ordinance.

Section 3. CONFLICT WITH GENERAL LAWS AND ZONING ORDINANCE

3.1 All matters upon which these Rules of Practice are silent shall be determined by the applicable provisions of Chapter 40A of the General Laws and of the Zoning Ordinance.

3.2 In the event of any conflict between these rules and any provision of the Zoning Ordinance, the Zoning Ordinance shall control.

Section 4. VARIATION

The Board may, in its discretion, where such action is not inconsistent with the intent and purpose of the Zoning Ordinance, waive strict compliance with these rules and regulations.

Section 5. ADMINISTRATION

It shall be the responsibility of the Zoning Board of Appeals to administer and enforce these regulations except where specific authority is given to some other municipal office by the zoning ordinance.

Michael J. Salas
Paul J. [unclear]
John Antinelli
Al [unclear]
George M. [unclear]

City of Worcester, Massachusetts

Michael V. O'Brien
City Manager



Julie A. Jacobson
Assistant City Manager
Office of Economic and Neighborhood Development

Joel J. Fontane, AICP
Director
Planning and Regulatory Services Division

Memorandum

To: David Rushford, City Clerk
From: Joel Fontane, AICP – Director, Planning & Regulatory Services Division
Date: August 1st, 2007
Re: **Amendment to the Zoning Board Rules & Regulations**

A handwritten signature in blue ink, likely belonging to Joel J. Fontane, the Director of Planning and Regulatory Services Division.

Enclosed for filing, please find an amendment to the Rules and Regulations of the Zoning Board of Appeals. The Worcester Zoning Board of Appeals voted at its meeting on July 23, 2007 to amend Article II Section 5 related to fees (see attached for filing).

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APPLICATION FEES WORCESTER ZONING BOARD OF APPEALS

Effective August 1, 2007

Special Permits		Variances
Uses Permitted by Special Permit Residential (including conversions or the addition of units) $\$185.00 + \$30.00 \text{ per DU (max } \$250.00 \text{ if \# of DU triggers Site Plan)}$ Non-Residential (including conversions to nonresidential use) $\$250.00 + \$0.05 \text{ per SF GFA (max } \$250.00 \text{ if GFA triggers Site Plan)}$ Expansion, Alteration or Change of Non-Conforming Use/Structure Residential \$185.00 Multi-family (4 or more units) \$250.00 Non-Residential (including conversions to nonresidential use) $\$250.00 + \$0.05 \text{ per SF* (max } \$250.00 \text{ if use also requires a SP or Site Plan)}$		Area (lot area & sign size) Floor-to-area ratio Frontage Height Number of Parking Spaces Setback All Other Variances \$185.00 ea.
Other Special Permits		Administrative Appeal
Accessory Structures Number of Compact Spaces (26% up to 50%) Landscaping, Buffers & Screening Lodging House Mural or Banner Signs Non-Accessory Signs or Billboards Parking- 1 Space or 10% Required Parking Layout / Loading Spaces / Drive-Thru Lane Placement of Fill, Dumping or Excavation Revival of Nonconforming Use All Other Special Permits		\$250.00 Amendments \$250.00 or filing fee (whichever is lower) Extension of Time \$100.00
Wireless Facilities		\$500.00
General Notes		
*Area affected only All applications shall be accompanied by cash or check for the filing fee, payable to the City of Worcester. Filing fees shall be no more than \$2,500.00 for any combination of Zoning Board applications filed at the same time		

City of Worcester, Massachusetts

Michael V. O'Brien
City Manager

Julie A. Jacobson
Assistant City Manager
Office of Economic and Neighborhood Development



Joel J. Fontane, AICP
Director
Planning and Regulatory Services Division

Memorandum

To: David Rushford, City Clerk

From: Joel Fontane, AICP – Director, Planning & Regulatory Services Division

Date: June 30, 2009

Re: **Amendment to the Zoning Board of Appeals Rules and Regulations**

Enclosed for filing, please find an amendment to the Zoning Board of Appeals Rules and Regulations of the City of Worcester. The Zoning Board of Appeals voted at its meeting on June 29, 2009 to amend Article II, Section 5, related to fees (see attached for filing).

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APPLICATION FEES WORCESTER ZONING BOARD OF APPEALS Effective July 1, 2009	
Special Permits	Variances
Table 4.1 Uses Permitted Only by Special Permit Residential (including conversions or the addition of units) (e.g. Lodging Houses, Multi-family) \$225.00 + \$35.00 per DU (max \$300.00 if # of DU triggers Site Plan) Non-Residential (including conversions to nonresidential use) \$300.00 + \$0.06 per SF* (max \$300.00 if GFA triggers Site Plan) Expansion, Alteration or Change Non-Conforming Use/Structure Residential \$225.00 Multi-family (4 or more units) \$300.00 Non-Residential (including conversions to nonresidential use) \$300.00 + \$0.06 per SF* (max \$300.00 if use requires a SP or Site Plan)	Area (lot area & sign size) Floor-to-area ratio Frontage Height Number of Parking Spaces Setback All Other Variances \$225.00 ea.
Other Special Permits Private Garage in FYS Large Private Garages Waivers for groups of buildings under common ownership Number of Compact Spaces (26% up to 50%) Waivers for Landscaping, Buffers & Screening Temporary Mural or Banner Signs Non-Accessory Signs or Billboards Parking-1 Space or 10% Required Waivers for Parking Layout / Access Aisle/ Loading Spaces / Drive-Thru Lane Requirements Placement of Fill, Dumping or Excavation Revival of Nonconforming Use Adult Entertainment Establishments All Other Special Permits	Administrative Appeal \$500.00 ea. Amendments \$300.00 or filing fee (whichever is lower) Extension of Time \$150.00
Personal Wireless Service Facilities or Expansion, Alteration, Change Non-Conforming PWSF \$600.00 ea.	
General Notes *Area affected only All applications shall be accompanied by cash or check payable to the City of Worcester. Filing fees shall be no more than \$2,500.00 for any combination of Zoning Board applications filed at the same time.	

City of Worcester, Massachusetts

Michael V. O'Brien
City Manager

Julie A. Jacobson
Assistant City Manager
Office of Economic and Neighborhood Development



Joel J. Fontane, AICP
Director
Planning and Regulatory Services Division

Memorandum

To: David Rushford, City Clerk

From: Joel Fontane, AICP – Director, Planning & Regulatory Services Division

Date: November 15, 2010

Re: **Amendment to the Zoning Board of Appeals Rules and Regulations**

Enclosed for filing, please find an amendment to the Zoning Board of Appeals Rules and Regulations of the City of Worcester. The Zoning Board of Appeals voted at its meeting on November 8, 2010 to amend Article II, Section 5, related to Filing Fees (see attached for filing).

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AMENDMENT
TO THE RULES AND REGULATIONS
OF THE CITY OF WORCESTER ZONING BOARD OF APPEALS

The Rules and Regulations of the Worcester Zoning Board of Appeals approved and adopted on May 6, 1991, be and are hereby amended as follows:

- I. Section 5 of Article II, entitled "Filing Fees," is hereby amended by inserting a new subsection 5.6 as follows:

"Section 5.6 Consultant Review Fees. The Board may retain outside consultants to assist in reviewing any application for a special permit where the Board determines that the assistance of an outside consultant is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. In hiring outside consultants, the Board may engage engineers, planners or other appropriate professionals, who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances and regulations.

The Board may require that applicants pay a "review fee" consisting of the reasonable costs incurred by the Board for the employment of such outside consultants. Funds received by the Board under this section shall be deposited with the City Treasurer, who shall establish a special revolving fund for such purpose. Expenditures from this special account, including accrued interest, if any, shall be made at the direction of the Board without further appropriation and shall be made only in connection with the review of a particular project or projects for which the review fee has been collected from the applicant. At the completion of a project, any excess amount in the special account attributable to a particular project, including any accrued interest, shall be repaid to the applicant or to the applicant's successor in interest along with a final report of said account.

The Board shall give written notice to the applicant of the selection of any outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant and a request for payment of said fee. Failure of an applicant to pay the review fee within ten (10) days of the request for payment shall be cause for the Board to deny the application.

Any applicant may take an administrative appeal from the selection of the outside consultant to the City Council. Such appeal must be in writing and received by the City Council within ten (10) days of the Board's notice to the applicant of the selection of an outside consultant. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications, which shall consist either of an educational degree in or related to the field at issue or three (3) or more years of practice in the field at issue or related field. The required time limits for action upon an application by the Board shall be extended by the duration of the administrative appeal."